

MINUTES OF THE REGULAR MEETING OF THE BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS

FOR DECEMBER 6, 2006

The **Regular Meeting** of the Council of Commissioners was called to order Wednesday, **December 6, 2006** in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana by Chief Executive Paul Babb.

ROLL CALL

9 present, 3 absent. Commissioners Dunlap, Fay and O'Leary were excused.

PRAYER

Commissioner Bury led the commissioners in prayer.

APPROVAL OF THE MINUTES OF THE NOVEMBER 21, 2006 REGULAR MEETING

It was moved by Commissioner Bury, seconded by Commissioner Coleman and carried by an unanimous verbal vote to approve the Minutes of the November 21, 2006 Regular Meeting.

ITEMS NOT ADDRESSED ON THE AGENDA – SUSPENSION OF THE RULES

None

PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA

Dr. John Ray, 915 W. Galena, came to the microphone. He had earlier passed out handouts. He commented on his concerns about the settlement agreement as listed in his handout. One of the outcomes of the voter approved recommendations of the Study Commission was that the council of commissioners needs to play a more pro-active role in local policy making and local government. This can begin now by a careful scrutiny of the proposed Settlement Agreement between Butte and ARCO regarding priority soils. It's up to the Council of Commissioners to hold the appointed officials accountable to the public. He handed out this document which he had prepared which contains some 16 liability problems for BSB that he sees in this settlement agreement.

Chief Executive Babb asked if any others in the audience wished to comment on this.

Rick Foote, editor of the Butte Weekly Newspaper, spoke on Mr. Ray's comments. He told they had been studying the work of the Study Commission for some time as they deliberated. The Study Commission's recommendations as approved by the citizens of Butte-Silver Bow could very well be invalid because the citizens of Butte-Silver Bow were not party to nor were they given the full language that the Study Commission will propose to implement as evidenced by the fact that the Study Commission even now is attempting to hammer out the language.

CHIEF EXECUTIVE'S REPORT

Chief Executive Babb said that the Allocation Agreement as it has been put before you has my full endorsement. At no point in time would that Allocation Agreement have moved forward to Council to ask for their consideration without my approval. I started working on this before he was elected. I was involved with this as a Council Member. I did not take anything that came through the Executive Branch lightly. We put a lot of research into what is happening on this Council no matter what issue it is and we do represent the public as does the Chief Executive. We did hire a law firm to give us the best possible legal advice on what Superfund Law entails and could guide us through this process. There was criticism before that Butte-Silver Bow did go this alone and that they did not have somebody that understood the legal ramifications for the short-term or the long-term. We did hire an expert with Gordon Hart who's with Paul Hastings and Associates. We also had members of all departments that are involved that would be affected by this, whether it was staff or if it was Department Heads that gave their input. At many meetings I talked with staff members and Department Heads and said if they had any reservations at all please let me know and we'll stop right now. There was nothing at any point where anybody felt we had to get this done under the gun or with any timeframe that was going to meet any deadline. It was up to the last minute of our negotiations that we were ready to walk away from the table. As with any negotiations, there is a lot of give and take. There are things that we know will not be perfect, but there's things that we know that we are protected on. The liability issues – there is a backstop. We do have insurance. We hired an expert in Superfund Law to give us the gut check so that we would have the best legal advice available to us. When we were sitting across the table from ARCO attorneys we had somebody that represented us. We also had local control. We haven't varied from what we set out and we gave to EPA. We now have an allocation agreement that I can endorse and I would encourage any Council member that if they feel not comfortable to vote on this there is nobody that under the gun to do this in any type of timeframe. If we feel that this is something that is good for Butte-Silver, we should move forward with it. The people that work for Butte-Silver Bow -- they are not doing it for any type of prestigious recognition. They are doing it because they live in this community, their families are from this community. They want to make the right decision that is right for our community, not right for the person. There's not one person that

was involved this negotiation that was trying to have something that would give them any type of notoriety. It was something to move forward which is good for our community. Not just for this generation, but for many, many generations to come. All of the documentation that Dr. Ray has submitted to you as Council members, I've also received. I've forwarded that on to our staff and to our attorneys and Gordon Hart will be preparing a document or response to the latest questions that Dr. Ray has on the legal issues. We will have that documentation to you. I do applaud people like Dr. Ray that do call out issues that they feel are not right and that's where we need to come back with information that we can refute that or give you the best information possible so that you can make an informed decision, which I trust that you will do. But tonight I want to go on the public record to say that the allocation agreement has my full endorsement.

I would also like to bring to your attention that Chris Fisk is erecting the Christmas Display at the Race Track Fire Hall. If any body would like to help out with that, they could sure use some help. If you can lend a hand – 9AM on Saturday.

A quick update on the pool. We did have a conversation with the Parks and Recreation Director in Missoula to talk with her about how they went through the process of getting some new pool amenities in Missoula. We spent about two hours on the phone with this person. She's is going to send us over a lot of information that we will be able to digest and decide if there is some information that we can use. We've also had a study done by some engineers from MSE. They have looked at the integrity of the pool, not only the decking and the pool itself but also what's underneath the pool and we have also had some Montana Tech students that have used some equipment that they have where they could characterize the soil that is around the pool. We are going to move forward in a more formal fashion and after the first of the year I'll be appointing a Pool Task Force. It will be their mission to gather all the information. They are going to move towards a master facility's plan so that we can understand what we have, what are the options that are out there. If any commissioners are interested in serving on that Task Force, please let me know.

He recognized Todd Hoar the Employee of the Month for December. If you see Todd, please congratulate him.

Quick update on the Red Cross. The Red Cross is looking at consolidating offices and moving the Butte office to Bozeman. We met in a group with the director of the Red Cross for Montana and we got a thirty-day stay. They are going to evaluate for another thirty days and it looks like if we can raise some money in the community which we are going to help him with, that there might be a chance we will not lose that office. We have some hope there.

SECTION I

PUBLIC HEARING

FOR THE PURPOSE TO HEAR COMMENTS ON REDEVELOPMENT PROPOSALS SUBMITTED FOR 241 E. PARK. (Communication No. 06-666 being held in Committee of the Whole) Proof of publication was noted and place on file.

Dori Skrukrud, Assistant Director, Community Development, gave a brief summary of the proposals submitted on 241 E. Park. She said they had received three proposals. One from Rex Leipheimer, Peggy Lowney and Gary Walton. The proposal from Rex Leipheimer was to build a commercial building for a professional office and perhaps some retail space with an estimated cost of 1.1 million dollars. Peggy Lowney's application is for a professional office and retail building with a estimated cost of over \$570,000. She would move her dental practice from Sampson Street into this building. Gary Walton has planned construction on the vacant property that is north of this site. His intentions are to construct a new law office for his firm at that location. His proposal is to make improvements to the 241 E. Park property with landscaping improvements with additional parking for his law firm.

Chief Executive Babb then opened the public hearing at 7:53 PM and called for proponents. On the third and final call there being none he called for opponents. Again there was no response so he called the public hearing closed at 7:54 PM

SECTION II

PUBLIC HEARING

FOR THE PURPOSE OF HEARING COMMENTS FOR THE RECEIPT OF UNANTICIPATED REVENUE IN THE AMOUNT OF \$14,800 FROM THE MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES. (Communication No. 06-670 being held in Committee of the Whole) Proof of publication was noted and placed on file.

Dan Dennehy, Health Department, gave the staff report. He explained funds from the State of Montana Public Health and Human Services in the amount of \$14,800 are to be used in two separate areas in the department. \$10,000 will go for public health preparedness to increase our computer capacity and laptop computers for our public health nurses program and also to update our infrastructure within the department for computers. \$4,800 is for our prevention program.

Chief Executive Babb then opened the public hearing at 7:55 PM and called for any proponents. On the third and final call there be none he called for opponents. Again there was no response so he closed the public hearing at 7:56 PM.

SECTION III

PUBLIC HEARING

FOR THE PURPOSE OF HEARING COMMENTS ON THE UNANTICIPATED REVENUE FOR THE POSITION OF CHIEF

COORDINATOR OF 2ND JUDICIAL DISTRICT DRUG COURT.
(Communication No. 06-671 being held in Committee of the Whole.) **Proof of publication was noted and placed on file.**

Dan Dennehy, Health Department Director, said this revenue is from the Montana State Supreme Court in the amount of \$36,264.00 for the creation of the Drug Court Chief Coordinator position. Our tobacco grant has been using that money for Julie Janacaro who is now a coordinator for the 2nd Judicial Court and we would like to get this money into our coffers to reimburse our tobacco grant and Julie can continue on with her work. This is a 3-year grant.

Chief Executive Babb then opened the public hearing at 7:57PM and called for proponents. On the third and final call there being none he called for opponents. Again there was no response so he called the Public Hearing closed at 7:58PM.

SECTION IV PUBLIC HEARING

FOR THE PURPOSE TO CONSIDER A RESOLUTION THAT WILL AMEND THE FY 2006-2007 BUDGET TO CREATE BUDGET AUTHORITY FOR THE BUTTE-SILVER BOW PUBLIC WORKS – TRANSIT DIVISION.
(Communication No. 06-683 being held in Committee of the Whole) **Proof of publication was noted and placed on file.**

Gary Keeler, Transit Director, gave the staff presentation. He said Butte-Silver Bow has been working with local transit providers this past year, which included the Belmont Senior Center, Aware and BSB. They are working to develop a coordination plan. He passed out a handout.

Chief Executive Babb opened the public hearing at 8:00 PM and called for proponents. On the third and final call there being no response he called for opponents. Again there was no response so he called the public hearing closed at 8:02 PM.

SECTION V PRESENTATION COMMUNICATION NO. 06-700

Mark Reavis, Property Management and Preservation Advisor, requesting time on 12/6/06 Agenda to submit an amended ordinance for approval.

Mark Reavis, Property Management and Presentation Advisor, told the council that when they started the public comments the communication was placed on file so this allows the process to be reactivated which would authorize the County Attorney to submit the amended ordinance. We received no negative public comments. There were edits and some language changed so its ready for your review.

It was moved by Commissioner Bury, seconded by Commissioner Coleman and carried with a unanimous verbal vote to approve Mr. Reavis' request and direct the County Attorney prepare the proper ordinance and refer it to the Judiciary Committee.

SECTION VI

CONSENT AGENDA

- A.**
 - 1. COMMITTEE OF THE WHOLE MEETING REPORT
 - 2. COMMITTEE OF THE WHOLE SITTING AS JUDICIARY REPORT
 - 3. FINANCE AND BUDGET COMMITTEE MEETING REPORT
 - 4. JUDICIARY COMMITTEE MEETING REPORT
 - 5. PUBLIC WORKS COMMITTEE MEETING REPORT

B. COMMUNICATIONS

Before entertaining a motion for approval of the Consent Agenda, Chief Executive called for any segregations. Commissioner Bury called for segregation of Communication 06-697. Commissioner Coleman called for segregation of Item 16, Communication No. 06-706. It was then moved by Commissioner Bury, seconded by Commissioner Lee and carried with a unanimous verbal vote to Approve the Consent Agenda, Section A, Items 1 through 5 and Section B, Items 1 through 18 with the exception of Items 8 and 16.

Communication No. 06-697. Tim Clark, Personnel Director, explained that since this communication was put on the agenda there have been two changes in the plan. As the result of a tentative agreement reached the day before yesterday with our Firefighters Union we have agreed that part of the tentative settlement that they want their positions to be included in that wage and benefit study. We are also proposing that two other unions be offered the opportunity to participate in the survey. Those unions are the Montana Nurses Association and the Butte-Silver Bow Federation of Professional Librarians. The second change is related to oversight. The oversight committee was to consist of five representatives – Linda Savor Joyce and Dan Powers would represent the Employment Workplace Enhancement Committee. The other members of that committee were to be myself and my Personnel Assistant from my office and also Shelly Jones who is the Administrative Aide for the Chief Executive. Once we had the agreement with the Firefighters Union we had to change the oversight committee. We know now that there is going to be one union participate and possibly three unions. The agreement we made with the Firefighters Union was that there would be three unions participating. Those three unions would get together and select two representatives to represent them on the oversight committee. That has to be changed a little bit because we are not sure if the other two unions are going to participate. The second change would be if there are three unions participating in the survey those three unions would get together and select two representatives. If

the Nurses and the Librarians decide not to participate we would have to go back to the Firefighters and talk to them about rearranging how many representatives would be on that committee.

It was moved by Commissioner Bury, seconded by Commissioner Coleman and carried with a unanimous verbal vote to concur with Mr. Clark's request to solicit proposals for a Classification Plan and Compensation Study with the recommended changes and place this communication on file.

Communication No. 06-706 Commissioner Coleman questioned if this appointment of Marko Lucich to the Civic Center Board is a permanent one.. Chief Executive Babb said he was appointed as a citizen not as Director of the Chamber and the appointment was for a three-year term. **It was then moved by Commissioner Coleman and seconded by Commissioner Bury to concur with the request and place on file. The motion carried with a unanimous verbal vote.**

SECTION VII

ORDINANCES – SECOND READING

1. COUNCIL BILL NO. 06-11 ORDINANCE NO. 06-11

AN ORDINANCE AMENDING SUBSECTION 9.01 OF SECTION 4 OF BUTTE- SILVER BOW ORDINANCE NO. 204 AND SECTION 10.32.010 (i) OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “STOP SIGNS”; PROVIDING THAT TRAFFIC PROCEEDING ALONG ILLINOIS AVENUE SHALL STOP BEFORE ENTERING THE INTERSECTION OF ILLINOIS AVENUE AND CLARK STREET AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner Bury, seconded by Commissioner Coleman and carried with a roll call vote of 9 yeas, 0 nays and 3 absent to place Council Bill No. 06-11, Ordinance No. 06-11 on second reading and passed having been deemed fully read at length.**

SECTION VIII

ORDINANCES AND RESOLUTIONS – SUSPENSION OF THE RULES

It was moved by Commissioner Bury, seconded by Commissioner Coleman and carried by a roll call vote of 9 yeas, 0 nays and 3 absent to suspend the rules for the purpose of passing Council Resolutions No. 06-111, 06-112, 06-113. 06-114 and 06-115 by waiving subsection 7 of Rule XXXVI, of the Rules and Order of Business of the Council of Commissioners, thereby having it considered for advanced passage without reference to the Judiciary Committee.

1. COUNCIL RESOLUTION NO. 06-111

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE FINAL PLAT OF THE FLINT CREEK RANCH CLUSTER DEVELOPMENT – PHASE II OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner Bury, seconded by Commissioner Coleman and carried by a roll call vote of 9 yeas, 0 nays and 3 absent to place Council Resolution No. 06-111 on final passed and passed having been deemed fully read at length.**

2. COUNCIL RESOLUTION NO. 06-112

A RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION WITH THE DEPARTMENT OF COMMERCE OF THE STATE OF MONTANA FOR A MONTANA COMMUNITY DEVELOPMENT BLOCK GRANT UNDER THE TERMS OF THE COMMUNITY DEVELOPMENT ACT OF 1971 (42 USC 5301) AS AMENDED. **It was moved by Commissioner Bury, seconded by Commissioner Coleman and carried by a roll call vote of 9 yeas, 0 nays and 3 absent to place Council Resolution No. 06-112 on final reading and passed having been deemed fully read at length.**

3. COUNCIL RESOLUTION NO. 06-113

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING RESERVE FUNDS FROM BUTTE-SILVER BOW GENERAL FUND RESERVED TO THE BUTTE-SILVER BOW PUBLIC WORKS DEPARTMENT FOR OPERATION OF THE ANIMAL SHELTER AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner Bury, seconded by Commissioner Coleman and carried by a roll call vote of 9 yeas, 0 nays and 3 absent to place Council Resolution No. 06-113 on final reading and passed having been deemed fully read at length.**

4. COUNCIL RESOLUTION NO. 06-114

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO BUTTE-SILVER BOW PUBLIC WORKS DEPARTMENT, METRO SEWER DIVISION FROM THE UNITED STATES

ARMY CORP OF ENGINEERS FOR THE PURPOSE OF AN ENGINEERING STUDY FOR A WASTE WATER TREATMENT PLANT UPGRADE TO BE EXPENDED IN THE METRO SEWER FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner Bury, seconded by Commissioner Coleman and carried by a roll call vote of 9 yeas, 0 nays and 3 absent to place Council Resolution No. 06-114 on final reading and passed having been deemed fully read at length. (Commissioner Sheehy voted nay).**

4. COUNCIL RESOLUTION NO. 06-115

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING RESERVE FUNDS FROM BUTTE-SILVER BOW HARD ROCK FUND RESERVES TO THE BUTTE-SILVER BOW PUBLIC WORKS DEPARTMENT FOR EXPENDITURE IN THE ROAD FUND TO CONSTRUCT A NEW ROAD FOR THREE BEARS ALASKA AND BUTTE EAST, LLC AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner Bury, seconded by Commissioner Coleman and carried by a roll call vote of 8 yeas, 1 nays and 3 absent to place Council Resolution No. 06-115 on final reading and passed having been deemed fully read at length. (Commissioner Sheehy voted nay)**

ADJOURN

There being no further business to come before the Council, it was moved by by Commissioner Bury, seconded by Commissioner Coleman and carried by a unanimous verbal vote to Rise to the Call of the Chair.

The meeting adjourned at 8:30 PM

CHIEF EXECUTIVE

ATTEST:

CLERK AND RECORDER